

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

JOHNSTON SCHOOL COMMITTEE

AND

JOHNSTON FEDERATION OF
TEACHERS, Local 1702, AFT, AFL-CIO

CASE NO: EE-1673

Unit Clarification: Director of
Adult Education

ORDER OF DISMISSAL

Investigative Agent: Joan N. Brousseau

Petitioner: Johnston School Committee

Relief Sought:

- 1) Exclusion of the position of Director of Adult Education from the bargaining unit certified by EE-1673.

Date(s) of Informal Hearing(s), Parties Present and Documents Exchanged:

December 4, 2000 (postponed from September 13, 2000, by agreement)

Labor Board: Joan N. Brousseau

Petitioner: Stephen Robinson, Esquire

Respondent: Robert E. Casey, Field Representative, AFT

RELEVANT HISTORY OF THE BARGAINING UNIT

EE-1673: On December 8, 1966, the Johnston Federation of Teachers Local 1702, AFT, AFL-CIO, was certified to represent: "all certified teachers engaged in teaching duties, excluding Superintendent, Assistant Superintendent, Principals, and Assistant Principals."

R.I.G.L. 28-9.3-2 defines certified teachers as:

"certified teaching personnel employed in the public school systems in the state of Rhode Island engaged in teaching duties, including support personnel whose positions require a professional certificate issued by the state department of education and personnel licensed by the department of health, or other non-administrative professional employees. Superintendents, assistant superintendents, principals, and assistant principals and other supervisors above the rank of assistant principal are excluded from the provisions of this chapter."

Administrative Procedure:

On December 28, 2000, after her investigation, the Board's Agent prepared a three (3) page written memorandum, outlining her findings. Both the Union and the Employer were provided with a copy of the written report, and both had the opportunity to submit additional written responses. On January 26, 2001, the Employer submitted a written response. In reaching the decision herein, the Board considered the contents of the investigator's report, the Employer's written response, and the bargaining history of this unit. ¹

¹ The Investigator's report is hereby adopted and incorporated herein by reference.

POSITION OF THE PARTIES

The Employer argues that the length of time that the position of Director of Adult Education has been in the bargaining unit has no bearing on whether it ought to now be removed. The Employer doesn't know how the position initially was placed into the bargaining unit. Employer argues that the position is clearly managerial, supervisory, and top-level administrative (under R.I.G.L. 28-9.3-2); and thereby, not eligible for collective bargaining. The Employer also argues that the position does not fall under the definition of "certified teacher" as set forth in R.I.G.L. 28-9.3-2. The Employer also argues that the position does not share a community of interest with other positions within the bargaining unit.

The Union:

The Union argues that this position has been within its bargaining unit for thirty years, and there has been no change that warrants the removal of the position at the present time. Union likens the position to a Department Head or Coach. The Union also complains that the inclusion of the position should not be driven by the identity of the current occupant. The Union also argues that the Director does not have the unbridled authority to hire and fire teachers for the Adult Education Program. The bargaining agreement requires the use of bargaining unit members for teachers, and spells out the hourly rates of pay for both the teachers and the Director of Adult Education. The person filling that position for years, retired from the active teaching ranks and has sought to retain this extracurricular activity position, at the expense of a bargaining unit member. The Union has filed a grievance on this matter, but has agreed with the Employer to hold it in abeyance until the Board rules on this petition.

DISCUSSION

Since there is an extensive history of acknowledgment of this position as being appropriate for inclusion within the bargaining unit, the Petitioner has a difficult burden to establish that the position should now be excluded. Indeed, the petition appears to be generated by the desire to keep Mr. Indell, a retired Johnston school teacher, in the position he held while also engaged in active teaching duties, as a member of the Johnston School Department.

The Employer argues that since Mr. Indell is no longer engaged in teaching duties, then he is not a "certified teacher" and, therefore, the position he holds is not appropriate for inclusion within the bargaining unit. This type of circuitous argument is not appropriate in this case

because the Union has, in fact, complained about a non-bargaining unit member remaining in the position. Therefore, just because the Union has not yet been successful in having Mr. Indell removed from the position, does not mean that the position itself is inappropriate for inclusion within the unit.

The Employer also argues that the Director does not share a community of interest with the teachers in the unit, because they serve different populations, work different hours, have different rates of pay (stipend vs hourly rate), and do not enjoy the same benefits. The Union argues that there are other positions under the contract that also receive “stipends”; this does not preclude them from inclusion within the bargaining unit. The Board notes that the portion of the contract provided by the parties (Appendix A-Salaries) includes three types of “stipend” positions: “Coaches” (including intramural), “Extra-Curricular” and “Adult Education”. Although not specifically in evidence in this case, it is well known that coaching positions entail work outside the school day, including nights and weekends.

In the Board’s opinion, the method or rates for paying teachers for additional duties, such as coaching, extra-curricular activities, and teaching adult education does not destroy the unit’s community of interest with these positions. The Board also finds that, although the Director of Adult Education can “hire” and “fire” teachers for adult education, this “supervisory authority” is severely limited by the collective bargaining agreement’s requirement to use bargaining unit members, at specified rates of pay. Finally, the Director’s ability to select course offerings, subject to the approval of the Superintendent, does not, in this Board’s opinion, equate to the “formulation or effectuation of management policies” so as to render this position managerial.

In conclusion, the Board does not find that there exists a substantial change in the duties of the position so as to warrant exclusion of the position of Director of Adult Education from the bargaining unit.

FINDINGS OF FACT

- 1) The Board’s Agent conducted an investigation and held an informal hearing, which was attended by both parties.
- 2) The position of Director of Adult Education has been included in the bargaining unit for approximately 30 years.

- 3) Mr. Howard Indell has held the position of Director of Adult Education for approximately twenty (20) years. Until his retirement in 1999, Mr. Indell was also a teacher in the Johnston School System.
- 4) The collective bargaining agreement provides for the annual stipend for the Director of Adult Education, and the hourly rate for all bargaining unit teachers.
- 5) The Director of Adult Education arranges adult education classes for resident and non-resident adults. There are two sessions each year: 10 weeks each in the fall and the spring.
- 6) The “stipend” for the Director of Adult Education is set forth by a collective bargaining agreement between the Union and the Employer. The bargaining agreement also calls for a “stipend” for coaches, and extra-curricular activities such as Yearbook Advisor, etc.
- 7) The teachers of the adult education classes are bargaining unit members, whose salaries are set by the collective bargaining agreement.

CONCLUSIONS OF LAW

- 1) The Petitioner has not established, by a fair preponderance of the evidence set forth at the informal hearing, or the investigation, that the position of “Director of Adult Education is excludable from the existing bargaining unit as managerial, supervisory, or top-level administrative (under R. I. G. L. 28-9.2-3).

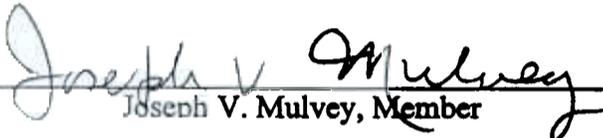
ORDER

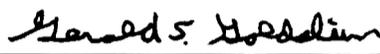
- 1) Pursuant to R. I. G. L. 28-7-9 (d), the petition for the exclusion of the position of “Director of Adult Education” from the bargaining unit certified by Case No. EE-1673 is hereby denied and dismissed.

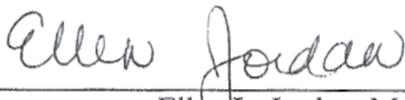
RHODE ISLAND STATE LABOR RELATIONS BOARD

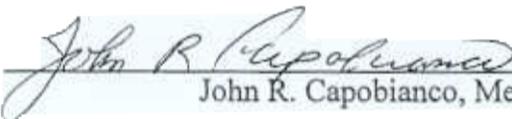

Walter J. Lanni, Chairman

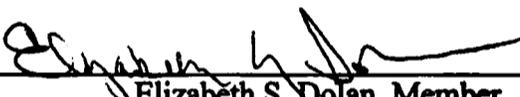

Frank J. Montanaro, Member


Joseph V. Mulvey, Member


Gerald S. Goldstein, Member

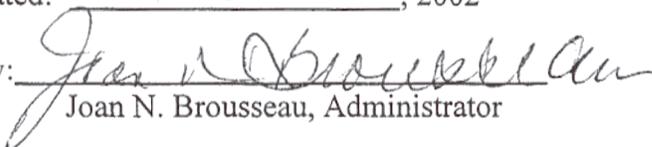

Ellen L. Jordan, Member


John R. Capobianco, Member


Elizabeth S. Dolan, Member

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: March 1, 2002

By: 
Joan N. Brousseau, Administrator